

2 **HB 1060** - S COMM AMD (S2849.1)

3 By Committee on Labor, Commerce & Trade

4 ADOPTED (AS AMENDED BY #306) 4/12/95

5 On page 11, after line 31, insert the following:

6 "Sec. 9. RCW 66.28.180 and 1985 c 226 s 4 are each amended to read
7 as follows:

8 It is unlawful for a person, firm, or corporation holding a
9 certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer
10 wholesaler's license, a brewer's license, a beer importer's license, a
11 domestic winery license, a wine importer's license, or a wine
12 wholesaler's license within the state of Washington to modify any
13 prices without prior notification to and approval of the board.

14 (1) Intent. This section is enacted, pursuant to the authority of
15 this state under the twenty-first amendment to the United States
16 Constitution, to promote the public's interest in fostering the orderly
17 and responsible distribution of malt beverages and wine towards
18 effective control of consumption; to promote the fair and efficient
19 three-tier system of distribution of such beverages; and to confirm
20 existing board rules as the clear expression of state policy to
21 regulate the manner of selling and pricing of wine and malt beverages
22 by licensed suppliers and wholesalers.

23 (2) Beer and wine wholesale price posting. (a) Every beer or wine
24 wholesaler shall file with the board at its office in Olympia a price
25 posting showing the wholesale prices at which any and all brands of
26 beer and wine sold by such beer and/or wine wholesaler shall be sold to
27 retailers within the state.

28 (b) Each price posting shall be made on a form prepared and
29 furnished by the board, or a reasonable facsimile thereof, and shall
30 set forth:

31 (i) All brands, types, packages, and containers of beer offered for
32 sale by such beer and/or wine wholesaler;

33 (ii) The wholesale prices thereof to retail licensees, including
34 allowances, if any, for returned empty containers.

35 (c) No beer and/or wine wholesaler may sell or offer to sell any
36 package or container of beer or wine to any retail licensee at a price

1 differing from the price for such package or container as shown in the
2 price posting filed by the beer and/or wine wholesaler and then in
3 effect, according to rules adopted by the board.

4 (d) Quantity discounts are prohibited. No price may be posted that
5 is below acquisition cost plus ten percent of acquisition cost.
6 However, the board is empowered to review periodically, as it may deem
7 appropriate, the amount of the percentage of acquisition cost as a
8 minimum mark-up over cost and to modify such percentage by rule of the
9 board, except such percentage shall be not less than ten percent.

10 (e) Wholesale prices on a "close-out" item shall be accepted by the
11 board if the item to be discontinued has been listed on the state
12 market for a period of at least six months, and upon the further
13 condition that the wholesaler who posts such a close-out price shall
14 not restock the item for a period of one year following the first
15 effective date of such close-out price.

16 (f) The board may reject any price posting that it deems to be in
17 violation of this section or any rule, or portion thereof, or that
18 would tend to disrupt the orderly sale and distribution of beer and
19 wine. Whenever the board rejects any posting, the licensee submitting
20 the posting may be heard by the board and shall have the burden of
21 showing that the posting is not in violation of this section or a rule
22 or does not tend to disrupt the orderly sale and distribution of beer
23 and wine. If the posting is accepted, it shall become effective at the
24 time fixed by the board. If the posting is rejected, the last
25 effective posting shall remain in effect until such time as an amended
26 posting is filed and approved, in accordance with the provisions of
27 this section.

28 (g) All price postings filed as required by this section shall at
29 all times be open to inspection to all trade buyers within the state of
30 Washington and shall not in any sense be considered confidential.

31 (h) Any beer and/or wine wholesaler or employee authorized by the
32 wholesaler-employer may sell beer and/or wine at the wholesaler's
33 posted prices to any class A, B, D, E, H, or G licensee upon
34 presentation to the wholesaler or employee at the time of purchase of
35 a special permit issued by the board to such licensee.

36 (i) Every class A, B, D, E, H, or G licensee, upon purchasing any
37 beer and/or wine from a wholesaler, shall immediately cause such beer
38 or wine to be delivered to the licensed premises, and the licensee
39 shall not thereafter permit such beer to be disposed of in any manner

1 except as authorized by the license.

2 (ii) Beer and wine sold as provided in this section shall be
3 delivered by the wholesaler or an authorized employee either to the
4 retailer's licensed premises or directly to the retailer at the
5 wholesaler's licensed premises. A wholesaler's prices to retail
6 licensees shall be the same at both such places of delivery.

7 (3) Beer and wine suppliers' price filings, contracts, and
8 memoranda. (a) Every brewery and winery offering beer and/or wine for
9 sale within the state shall file with the board at its office in
10 Olympia a copy of every written contract and a memorandum of every oral
11 agreement which such brewery or winery may have with any beer or wine
12 wholesaler, which contracts or memoranda shall contain a schedule of
13 prices charged to wholesalers for all items and all terms of sale,
14 including all regular and special discounts; all advertising, sales and
15 trade allowances, and incentive programs; and all commissions, bonuses
16 or gifts, and any and all other discounts or allowances. Whenever
17 changed or modified, such revised contracts or memoranda shall
18 forthwith be filed with the board as provided for by rule. The
19 provisions of this section also apply to certificate of approval
20 holders, beer and/or wine importers, and beer and/or wine wholesalers
21 who sell to other beer and/or wine wholesalers.

22 Each price schedule shall be made on a form prepared and furnished
23 by the board, or a reasonable facsimile thereof, and shall set forth
24 all brands, types, packages, and containers of beer or wine offered for
25 sale by such licensed brewery or winery; all additional information
26 required may be filed as a supplement to the price schedule forms.

27 (b) Prices filed by a brewery or winery shall be uniform prices to
28 all wholesalers on a state-wide basis less bona fide allowances for
29 freight differentials. Quantity discounts are prohibited. No price
30 shall be filed that is below acquisition/production cost plus ten
31 percent of that cost, except that acquisition cost plus ten percent of
32 acquisition cost does not apply to sales of beer or wine between a beer
33 or wine importer who sells beer or wine to another beer or wine
34 importer or to a beer or wine wholesaler, or to a beer or wine
35 wholesaler who sells beer or wine to another beer or wine wholesaler.
36 However, the board is empowered to review periodically, as it may deem
37 appropriate, the amount of the percentage of acquisition/production
38 cost as a minimum mark-up over cost and to modify such percentage by
39 rule of the board, except such percentage shall be not less than ten

1 percent.

2 (c) No brewery, winery, certificate of approval holder, wine
3 importer, or wine wholesaler may sell or offer to sell any beer or wine
4 to any persons whatsoever in this state until copies of such written
5 contracts or memoranda of such oral agreements are on file with the
6 board.

7 (d) No brewery or winery may sell or offer to sell any package or
8 container of beer or wine to any wholesaler at a price differing from
9 the price for such package or container as shown in the schedule of
10 prices filed by the brewer or domestic winery and then in effect,
11 according to rules adopted by the board.

12 (e) The board may reject any supplier's price filing, contract, or
13 memorandum of oral agreement, or portion thereof that it deems to be in
14 violation of this section or any rule or that would tend to disrupt the
15 orderly sale and distribution of beer or wine. Whenever the board
16 rejects any such price filing, contract, or memorandum, the licensee
17 submitting the price filing, contract, or memorandum may be heard by
18 the board and shall have the burden of showing that the price filing,
19 contract, or memorandum is not in violation of this section or a rule
20 or does not tend to disrupt the orderly sale and distribution of beer
21 or wine. If the price filing, contract, or memorandum is accepted, it
22 shall become effective at a time fixed by the board. If the price
23 filing, contract, or memorandum, or portion thereof, is rejected, the
24 last effective price filing, contract, or memorandum shall remain in
25 effect until such time as an amended price filing, contract, or
26 memorandum is filed and approved, in accordance with the provisions of
27 this section.

28 (f) All prices, contracts, and memoranda filed as required by this
29 section shall at all times be open to inspection to all trade buyers
30 within the state of Washington and shall not in any sense be considered
31 confidential."

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34 ADOPTED 4/12/95

35 On page 1, line 3 of the title, after "66.24.330," strike "and
36 66.24.490" and insert "66.24.490, and 66.28.180"

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